THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

WRIT PETITION Nos.34694, 34715 OF 1997

AND 1392 OF 1998

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DATE: 26-10-2005

W.P. No.34694 of 1997

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Between:

C.D.R. Medical Industries

Rep. by its Chairman, C. Dayakar Reddy,

Aged 40 years, R/o.693/2/10, Road No.12,

Banjara Hills, Hyderabad. **... PETITIONER**

AND

The Director General of Health Services,

Nirman Bhavan, New Delhi & 4 others **... RESPONDENTS**

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

W.P. No.34715 of 1997

Between:

C.D.R. Health Care Limited

Rep. by its Chairman, C. Dayakar Reddy,

Hyderguda, Hyderabad. **... PETITIONER**

AND

The Director General of Health Services,

Nirman Bhavan, New Delhi & 5 others **... RESPONDENTS**

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

W.P. No.1392 of 1998

Between:

CDR Medical Industries Limited

Rep. by its Chairman, Dr. C. Dayakar Reddy,

Aged 40 years, R/o.693/2/10, Road No.12,

Banjara Hills, Hyderabad. **... PETITIONER**

AND

The Director General of Health Services,

Nirman Bhavan, New Delhi & 5 others **... RESPONDENTS**

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

WRIT PETITION Nos.34694, 34715 OF 1997

AND 1392 OF 1998

COMMON ORDER:(Per Hon'ble Mr. Justice B. Sudershan Reddy)

These three writ petitions are being disposed of by common order since the question that falls for our consideration in all the matters is one and the same.

The Central Government, in exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (for short 'the Act') issued notification granting exemption of equipment, apparatus and appliances, including spare parts and accessories thereof, the import of which is approved either generally or in each case by the Government of India in the Ministry of

Health and Family Welfare, or by the Directorate General of Health Services to the Government of India, as essential for use in any hospital, from payment of customs duty. The notification itself specifies the terms and conditions as to what factors are required to be taken into consideration in approving the import of any hospital equipment specified in paragraph 1 thereof. The terms and conditions, *inter alia,* provide that regard shall be had to the factors such as (i) that the hospital equipment in respect of which the exemption is claimed under this notification is not manufactured in India; and (ii) that the hospital equipment in respect of which exemption is claimed is necessary for running or maintenance of the hospital. All such hospitals are required to be certified by the Ministry of Health and Family Welfare to be run or substantially aided by such charitable organization, as may be approved, from time to time, by it. All such hospitals, which may be certified by the said Ministry, in each case, to be run for providing medical, surgical or diagnostic treatment not only without any distinction of caste, creed, race, religion or language but also (a) free, on an average, to at least 40 per cent of all their outdoor patients; and (b) free to all indoor patients belonging to the families with an income of less than Rs.500/- per month, and keeping for this purpose at least 10% of all the hospital beds reserved for such patients; and (c) at reasonable charges, either on the basis of the income of the patients concerned or otherwise, to patients other than those specified in clauses (a) and (b). The rest of the details are not required to be noticed.

However, sofar as the hospitals, which are in the process of being established, and in respect of which the Ministry of Health and Family Welfare is of opinion that there is an appropriate programme for establishment of the hospital, that there are sufficient funds and other resources required for such establishment of the hospital and that the said Ministry certifies to that effect.

The petitioners herein claim to be full-fledged hospitals. They claimed to have purchased the following equipments:

1. MAGNETOM 42 SPE MRI SYSTEM vide

B/E No.48475, dated 28-12-1990,

B/E No.09082, dated 14-03-1991,

B/E No.020426, dated 24-05-1990,

B/E No.25076, dated 22-07-1991,

B/E No.035375, dated 27-08-1990, and

B/E No.020427, dated 24-05-1990.

2. (a) 1 Ameda Intensive Care Servo Controller Incubators, 2 Nos. Ameda Neonatal Resuscitation Unit B/E. No.14164, dated

20-04-1987 and 014163, dated 20-04-1989.

c. Multi Channel ECG Recorder

B/E. No.1952, dated 01-06-1989.

a. Mammography Unit B.E. No.37336, dated 17-10-1989.

b. Central Monitoring System with all ACC B.E. No.13249, dated 31-03-1990.

c. IL 1312 Blood Gas Manager, IL 501 NAK Analyser Sodium Potassium Attachments, IL Cellet BE, Cell Counter B.E. No.11438, dated 30-03-1989.

d. IL monarch 2000 B.E. No.11436, dated 30-03-1989.

e. Operation Table and Operating Lamp

B.E. No.16018, dated 22-03-1989.

f. Ultramark 6C Colour Doppler

B.E. No.23753, dated 03-07-1989.

g. Ultramark Ultra Sound System

B.E. No.20058, dated 06-06-1989.

3. Whole Body CT Scanner 2 Nos. vide B/E No.10165, dated 24-02-

1989 for Hyderabad and B/E. No.15606, dated 10-04-1990,

B/E. No.15604, dated 08-04-1990 for Visakhapatnam.

Based on the recommendations of the Andhra Pradesh State Government, the Director General of Health Services, New Delhi-1st respondent, issued Customs Duty Exemption Certificates (for short 'CDEC') on 06-03-1989, 22-02-1989, 26-03-1990 and 20-08-1990 to the petitioners' hospitals for the equipment purchased by them. It is claimed that the petitioners requested the Director of Medical Education for inspection of equipment so as to submit report to the State Government for its recommendations and onward transmission to the Director General of Health Services, New Delhi for issuance of Installation Certificate. The petitioners claim that installation certificates were issued on 03-03-1997, 15-03-1997 and 31-07-1997 by the Superintendent of ENT Hospital showing the details of the free treatment given to the outpatients and inpatients.

The Director General of Health Services, New Delhi vide proceedings dated 06-06-1997, 18-06-1997 and 09-07-1997, required the petitioners to show cause as to why the customs duty exemption certificates issued to them under the notification referred to hereinabove, should not be withdrawn.
The petitioners were accordingly directed to send their reply within 15 days from the date of issuance of the notice to the State Government with a copy to the Additional Deputy Director General of Health Services, New Delhi.

The petitioners were also put on notice that the State Government in turn is being asked to verify the data furnished by them and forward recommendations duly certified by the State Health Secretary within ten days from the date of their response. In the show cause notice, it is, *inter alia,* stated that one of the conditions prescribed for exemption for hospitals specified in para 2 of the table of the said notification is that all indoor patients belonging to the families with an income of less than Rs.500/- per month are provided free

medical, surgical or diagnostic treatment and that at least 10% of all the hospital beds are reserved for such patients. The petitioners were put on notice that the Ministry of Finance clarified in their Memorandum, dated 17-11-1993, that independent diagnostic centres/laboratories providing only diagnostic treatment and not having any indoor patient treatment facility, are not entitled to the benefit of exemption under the said notification.

The petitioners were also put on notice about the judgment of the Apex Court in ***Mediwel Hospital and Health Care Private Limited v. Union of India and others,*** in which, the Apex Court took the view that the authority that granted exemption certificate, is required to ensure that the obligations imposed on the persons availing of the exemption notification are being duly carried out and on being satisfied that such obligations are not being discharged, it is required to enforce realization of the customs duty from such institutions.

The sum and substance of the allegations levelled in the show cause notices is that the petitioners being only diagnostic centres, not having indoor patient treatment facilities and thus have not fulfilled the obligation of providing free indoor treatment to all the patients belonging to the families with an income of less than Rs.500/- per month and of keeping at least 10% of all the hospital beds reserved for such patients.

The allegations levelled in the show cause notices are twofold *viz*., that the petitioners' hospitals are only diagnostic centres and they are not providing free treatment and they are not discharging their obligation of providing free indoor treatment to the patients belonging to the families with an income of less than Rs.500/- per month. It is on these two grounds, the CDEC was sought to be cancelled, for which purposes, explanation was called for from the petitioners.

The petitioners submitted their explanations, which are more or less uniform, through the letters, dated 13-06-1997, 06-08-1997 and 27-06-1997,

inter alia, denying the allegations levelled in the show cause notice. Since the whole of the controversy centres round the nature of the explanation submitted by the petitioners, it would be appropriate to refer the reply, dated 13-06-1997, in
W.P. No.1392 of 1998, which is to the following effect.

> "1. We have applied Customs Duty Exemption Certificate for Magnetom 42 SPE MRI System (NMRI) for our centre at Hyderabad to Director of Medical Education, Hyderabad and they have instructed (Annexure 1) Superintendent, MNJ Cancer Hospital and Professors of Osmania Medical College & Hospital.
> The Superintendent and Professors has (*Sic*. have) submitted the report to Director of Medical Education (Annexure 2) for recommending to State Government. The State Government has recommded (Sic. recommended) our CDEC application to you (Annexure 3). And we have received the CDEC and Cleared the goods and installed in our Premises.
>
> 2 . At our request to Director of Medical Education for Installation certificate.
> The Director of Medical Education has instructed (Annexure 4) the Superintendent, ENT Hospital to inspect our centre and the superintendent has submitted the installation report (Annexure 5) to Director of Medical Education for recommending to State Government for issue of Installation.
>
> 3. At present our Installation certificate application is with State Government Medical & Health Department. The company name has been changed from CDR Diagnostics Limited to CDR Medical Industries Limited (Annexure 6).
>
> 4 . <u>We are treating 40% OP and 10% IP free as per the Customs Notification No.64/88, dt.1.3.88 and we have reserved beds for treating free patients</u>. (emphasis is of ours)
>
> 5 . We hope the above information holds good for your

necessary action to the DGHS, New Delhi Notice (Annexure 7)."

The Director General of Health Services, having considered the explanation submitted by the petitioners, came to the conclusion that the petitioners failed to submit their reply in the proper proforma and the details have not been furnished with regard to free treatment given to the outpatients and inpatients of the families with an income of less than Rs.500/- per month. The petitioners, according to the order, failed to provide number of indoor patient beds and reserve the beds for poor patients. It is further, *inter alia,* observed that the petitioner concerns are only diagnostic centres and not having indoor treatment facilities, and therefore, do not fulfill the conditions for availing and retaining CDEC issued to them under the notification, dated 01-03-1988. The said orders are impugned in these three writ petitions on various grounds.

Sri S.R. Ashok, learned senior counsel appearing on behalf of the petitioners, submits that the conclusion drawn by the Director General of Health Services that the petitioner concerns are only diagnostic centres not having indoor treatment facilities, is factually incorrect and such finding is attributable to non-application of mind. It is also contended that the Director General of Health Services failed to take the contents of the show cause notices into consideration and the details given by the petitioners in their explanation as regards free treatment given to the families with an income of less than Rs.500/- per month. Much reliance is placed on the annexures stated to have been enclosed along with the reply to the show cause notices. Learned senior counsel also contended that the petitioners cannot be penalised for the omission on the part of the State Government in forwarding the reply and further omission on the part of the State Government in making its recommendations.

Shorn of all the details, the only question that falls for our consideration

is “whether the impugned orders suffer from any vice requiring interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India ?”

We have referred in detail to the terms and conditions incorporated in the notification, dated 01-03-1988, wherein and whereby, the Government has decided to grant exemption from payment of customs duty in favour of such of those hospitals, which are required to import sophisticated machinery and equipment for providing treatment to the patients in their hospitals. One of the important conditions, as is evident from the notification, is that such of those hospitals which wanted exemption to be granted from payment of customs duty for the machinery imported by them, is that such hospitals are required to provide free treatment to the patients those who were treated as outpatients and inpatients with an income of less than Rs.500/- per month. This is the noble object sought to be achieved, for which purpose, exemption has been granted.

Obviously, the decision was taken by the Central Government to grant such exemption in public interest, and in fact, the notification refers to public interest parameters and perception, which prompted it to grant exemptions in favour of such hospitals to import hospital equipment with main object of providing free treatment at least to the specified percentage of outpatients and inpatients.

Now the question that falls for our consideration is “whether the petitioners have provided free indoor treatment to the patients belonging to the families with an income of less than Rs.500/- per month and whether any beds, as such, were reserved for such patients ?”

The impugned orders say that the petitioners did not furnish any such details. The attack against the impugned orders is that they suffer from non-application of mind and the failure to take the contents of the petitioners’ reply into consideration.

We have already noticed the reply submitted by the petitioners in detail, wherein, except stating that the petitioners are giving free treatment to 40% outpatients and 10% inpatients as per the customs notification dated 01-03-1988 and accordingly reserved beds for providing such free treatment, no details are furnished. Even if the contention of the petitioners that all the required details are provided in the annexures enclosed to the said reply is to be accepted, there is no annexure, as such, enclosed in support of their assertion. The reply submitted by the petitioners run into four paragraphs and there is a reference to annexure, which is not in existence. The claim of providing free treatment to the poor patients is therefore not acceptable.

It is thus clear that there is no annexure, as such, enclosed in support of the plea that the petitioners were giving free treatment to 40% outpatients and 10% inpatients by providing required beds for such free treatment.

In such view of the matter, it would be safe to conclude that the petitioners have not disputed the allegation levelled against them in the show cause notices about their not providing free treatment, as required in terms of the notification, for which purposes, mainly, the exemption has been granted for the machinery imported by the petitioners. It is clear that the petitioners have violated the terms and conditions, subject to which, exemption has been granted under the notification dated 01-03-1988.

In such view of the matter, it becomes irrelevant whether the State Government submitted its recommendations and expressed its opinion in the matter in one way or the other. The subsequent improvement sought to be made by the petitioners in the affidavit filed in support of the writ petitions is absolutely of no consequence, since what is germane for the purpose of deciding the issue is the reply submitted by the petitioners to the show cause notices issued by the Director General of Health Services. The petitioners are under obligation to provide necessary details as regards the free treatment, if any, provided by them to the poor and needy patients. They are under obligation to establish and prove that they have, in fact, provided such free treatment to the outpatients and inpatients.

The petitioners, not only failed to provide the details as regards the free treatment in their reply to the show cause notices but also did not furnish any such details even during the course of hearing of these writ petitions and no such details are forthcoming even from the averments made in the affidavit filed in support of the writ petitions.

For the aforesaid reasons, we do not find any error to have been committed by the Director General of Health Services in passing the impugned orders. The petitioners are not entitled to any exemption from payment of customs duty on the equipment imported by them under the said notification since they have not complied with the essential conditions of providing free treatment to the needy patients.

For the aforesaid reasons, we find no merit in these writ petitions and they are accordingly dismissed without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:26-10-2005.

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S. ANANDA REDDY, J

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